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 * In the Matter of the Petition of *
 *
 * VILLAGE OF WEST MILWAUKEE *
 *
 * For Final and Binding Arbitration *
 * between the Petitioner and *
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 * WEST MILWAUKEE PROFESSIONAL FIREFIGHTERS *
 * ASSOCIATION, LOCAL 1417, I.A.F.F. *
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Case XI
 No. 17425, MIA-73
 Decision No. 12445-A
 ARBITRATION OPINION & AWARD

INTRODUCTION, APPEARANCES, BACKGROUND & ISSUES

On December 6, 1973, the Village of West Milwaukee, hereinafter identified as the Village, filed a petition with the Wisconsin Employment Relations Commission (WERC) stating that it had reached an impasse on wages, benefits and contract language in its negotiations with the West Milwaukee Professional Firefighters Association, Local 1417, I.A.F.F., hereinafter identified as the Association, and requested that the matter be resolved by final and binding arbitration, Form 2 of Wisconsin Statutes 111.77 (4) (b) under which the arbitrator must select as his award the final offer of one of the parties without modification of such final offer. The WERC conducted informal investigations on December 27, 1973 and January 14, 1974 and, finding that an impasse still existed, issued an order for arbitration dated January 29, 1974 and furnished the parties with a panel of arbitrators from which they could select an arbitrator. The parties advised the WERC that they had selected the undersigned, James L. Stern, and the WERC issued an order dated February 7, 1974 appointing him as the impartial arbitrator.

The arbitration hearing was convened on March 19, 1974 in Milwaukee, Wisconsin. Appearing for the Village was Roger E. Walsh, Attorney, Peck, Brigden, Lindner, Honzik & Peck; appearing for the Association was John J. Romann, Attorney, Petrie, Stocking, Meixner & Zeisig. The proceedings were not transcribed. Witnesses for the Association were Delbert J. Seebuch and George Heuer, President and Secretary of the Association; witnesses for the Village were Clarence Quandt and Harry Rydlewicz, Captain and Chief of the Village's fire department, Roger Walsh (in his capacity as Village negotiator) and William Testdorf, Village Trustee. The Village filed a post-hearing statement of position April 2, 1974; the Association replied April 11, 1974, the Village made final comments dated April 19, 1974 and the record was thereupon closed.

The final offers of the Village and the Association are quoted below:

REVISED FINAL OFFER OF VILLAGE OF WEST MILWAUKEE
 AS OF MARCH 13, 1974 ON THE ISSUES REMAINING
 IN NEGOTIATIONS WITH THE WEST MILWAUKEE
 PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 1417, IAFF

1. WAGES

(a) Effective January 1, 1974:

Firefighters and Fire Inspectors

First Year	\$ 845.00
Second Year	875.00
Third Year	935.00
(Eff. 4/1/74 - \$915.00)	
Fourth Year	965.00
Fifth Year	1022.00

Fire Lieutenants

First Year	\$1055.00
Second Year	1095.00
Third Year	1143.00

- (b) Village opposes additional increment of \$33 per month to be added to the basic monthly wage of nine presently designated and assigned equipment operators.

2. PAID VACATIONS

The vacation schedule to remain as provided in the 1972-1973 Agreement (provisions effective January 1, 1973), i.e. Article VIII(A) to read:

- "A. Paid vacations of employees shall be as follows:
- 1) One (1) through eight (8) years of service - five (5) duty days
 - 2) Nine (9) through fifteen (15) years of service- seven (7) duty days
 - 3) Sixteen (16) through twenty-three (23) years of service- ten (10) duty days
 - 4) Twenty-four (24) or more years of service- twelve (12) duty days

3. TERM OF CONTRACT

Article entitled "Duration and Negotiation Timetable" revised to read:

- "A. This contract shall be in effect from January 1, 1974, to and including December 31, 1975. Requests for a new contract from the Union are to be submitted to the Village Board no later than July 15, 1975, and negotiations may begin at anytime thereafter.
- B. This contract may be reopened only for the purpose of wage negotiations on the wage rates listed in Article VII for the year 1975. The party desiring such wage reopener must serve a written notice to the other party not later than July 15, 1974, or within thirty (30) days of the date of the Section 111.77 arbitration award, if such arbitration award date is later than July 15, 1974. In the event such notice is given, the parties shall bargain collectively on such wage rates.
- C. In the event any Federal or State law is passed during the term of the contract which requires overtime to be paid for hours worked in excess of a workweek or average workweek which is less than the present 56 hour workweek provided for in this contract, this contract may be reopened only for the purpose of negotiations on revisions to Articles IV (Workweek), V (Paid Holidays), VI (Extra Hours), VIII (Paid Vacations) and XI (Sick and Injury Leaves). The party desiring such reopener must serve a written notice to the other party within thirty (30) days of the date such Federal or State law is published. In the event such notice is given, the parties shall bargain collectively on revisions to such Articles.
- D. Both the Village of West Milwaukee, and the West Milwaukee Professional Firefighters Association, Local #1417, I.A.F.F. and the individual members of said West Milwaukee Professional Firefighters Association in the employment of said Village, expressly agree that this Contract shall be binding upon all parties for the duration of time herein set forth."

4. All other provisions of the Contract to be as set forth in the proposed draft of the new Contract, Letter of Understanding and Memorandum of Agreement, which incorporates various additions, modifications and deletions previously agreed upon between the parties, and which was sent to the Union on March 1, 1974. (References therein to the dates of the Contract to be adjusted pending the outcome of the arbitration award.)

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FINAL OFFER OF WEST MILWAUKEE PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 1417, I.A.F.F., AS OF JANUARY 14, 1974
ON THE ISSUES REMAINING IN NEGOTIATIONS WITH VILLAGE OF
WEST MILWAUKEE

I - WAGES (General)

An increase in wages for all employees in the bargaining unit of \$77.00 per month in order to provide the following wage scale:

Fire Fighters and Fire Inspectors

First Year	\$ 897.00
Second Year	922.00
Third Year	957.00
Fourth Year	987.00
Fifth Year	1044.00

Fire Lieutenants

First Year	\$1077.00
Second Year	1117.00
Third Year	1165.00

II - WAGES (Equipment Operators)

An additional increment of \$33.00 per month to be added to the basic monthly wage of the nine presently designated and assigned equipment operators.

III - Paid Vacations

An additional one (1) day of paid vacation to be added to the vacation benefits and schedules which were in effect for the calendar year of 1973.

IV - LENGTH OF CONTRACT

That the instant contract be negotiated for a one (1) year period, the calendar year of 1974.

V - RETROACTIVITY

That all terms, conditions and provisions of the instant contract be made retroactive to the 1st day of January, 1974.

Respectfully submitted by
WEST MILWAUKEE PROFESSIONAL
FIREFIGHTERS ASSOCIATION,
LOCAL 1417, I.A.F.F.

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The differences between the two offers are essentially: a \$55/month increase vs. a \$77/month general wage increase (the Village also proposes some modifications to the first three steps of the schedule which will not affect any current employee),

the initiation of a \$33/month premium to be paid to the nine regularly assigned drivers, an increase of one day in the vacation schedule, and a one year agreement vs. a two year agreement with a wage reopener and a reopener if Federal legislation which would affect overtime payments is enacted.

DISCUSSION

The discussion of the offers is organized as follows. There are two sections about the size of the general wage increase, the first involving comparability and the second involving cost of living. These are followed by examinations of the driver premium question, the increase in vacation, contract duration, and a summary of the combined impact of the various issues.

Comparative Wage Data

One of the criteria set forth in 111.77 to guide arbitrators in the resolution of disputes is the wage paid to similar workers in comparable communities. The Village defends its offer of a \$55 per month wage increase primarily on the ground that it will provide West Milwaukee firefighters with a wage that (after adjustments for differences in employer contributions to employee pensions) is higher than that paid to firefighters in any of the nine communities in the area with which it made comparisons (Village Exhibit #4 and pp. 2-3 of Village Brief).

The Association advances several arguments in its reply brief as grounds for the claim that the Village statistics are not an equitable measure of the wage increase that should be paid in 1974. It argues first that most of the 1974 wages listed in Village Exhibit #4 were arrived at as part of multi-year agreements negotiated prior to the recent substantial price increases and as such do not reflect current economic conditions. It argues further about the representativeness of the Village comparisons, noting that five of the nine communities are at least partially staffed by volunteer fire personnel and that two of the communities are not located in Milwaukee County. The Association also notes in its brief that the average shown in Village Exhibit #4 may be misleading because the Village has not included the Milwaukee County communities of Glendale, Milwaukee, Shorewood, South Milwaukee and Wauwatosa in its wage comparisons.

The arbitrator does not believe that weaknesses in the data should lead him to disregard the factor of comparable wages. If the Association believes that the Village data are incomplete or non-representative, it can offer its own data on this point. For example, the Association does not provide the wage data for the above enumerated communities which were not included in Village Exhibit #4. Nor does it state which of these communities have not yet concluded negotiations for 1974 wages. Possibly the inclusion of these additional comparisons would negate the Village claim that it was paying a relatively high wage compared to other communities, or possibly, these further comparisons would not alter appreciably the results shown in Village Exhibit #4. In any case, failure to supply this information weakens the grounds on which the Association challenges the particular comparisons cited by the Village.

As for the propriety of including Brookfield and Waukesha in Village Exhibit #4, the arbitrator notes that, although these communities are not immediately adjacent to West Milwaukee, they are included by the U.S. government in its definition of the Milwaukee Standard Metropolitan Statistical Area. It seems reasonable therefore to include them in the comparison.

The Village also notes that its proposed firefighter wage schedule will maintain what it believes to be a satisfactory relationship with the partially agreed upon 1974 Village police wage schedule. The Association points out that there are no employees in the agreed upon first four steps of the schedule and that no agreement has been reached yet on the wage for the fifth step. In the absence of final agreement on the 1974 police wage schedule, the arbitrator cannot give any weight to what is traditionally a significant relationship.

The arbitrator agrees with the Association claim that most of the wages shown in Village Exhibit #4 were negotiated prior to the acceleration in price increases and as such do not take into account the recent depreciation of real wages. But the thrust of that particular argument seems to go to the question of changes in the cost of living rather than to the question of comparable wages.

In effect, the Association is arguing that the arbitrator should discount the importance of the Village comparable wage data because of the above claimed weaknesses in it, and presumably, should rely instead upon changes in consumer prices, a point to which we will turn next. Insofar as comparable wages go, however, the arbitrator believes that the Association has not rebutted the Village claim that its offer is fair and reasonable by that standard.

Cost of Living

Another criterion set forth in 111.77 is the cost of living. In order to maintain the real wage of the West Milwaukee firefighter, the money wage must be increased to match the percentage increase in the Consumer Price Index. Joint Exhibit #1, the latest agreement between the Village and the Association, signed June 5, 1972, and covering the two year period ending December 31, 1973, provided that the maximum firefighter wage would be \$925/month effective February 1, 1972, and would be raised to \$967/month effective January 1, 1973.

Equity suggests that the real wage provided for at the outset of that agreement should be maintained. Using the February, 1974 wage as the base, the proposed Village offer to increase the wage to \$1,022, effective January 1, 1974 represents a 10.5% increase; the \$1,044 wage proposed by the Association represents a 12.9% increase. Based on the quarterly BLS consumer price index for the Milwaukee metropolitan area for the period just prior to the start of the last agreement, November, 1971, (120.9) and the index for the period just prior to the conclusion of the last agreement, November, 1973 (135.7)--data presented in Association Exhibit #4--there has been an increase in consumer prices of 12.2%. The Association proposal has the effect of improving the real wage slightly while the Village offer falls short of doing so. (If the base chosen had been January 1, 1973, the date of the last increase, neither proposal would maintain the real wage of the firefighters although the Association proposal would come closer to doing so. If the February '72, '73 and '74 Milwaukee CPI figures are used, as shown on p. 6 of the Village brief, prices have increased even more than is noted when the Association's November figures are used.)

If the change in the cost of living is given greater consideration than comparable wage data, and if the general wage increase is the only issue, the arbitrator believes that the Association proposal should prevail over that of the Village. But since there are other issues and since the statute does not give primacy to either factor, it is necessary to review the other issues and consider the other factors in order to determine which of the two proposals is more equitable.

Additional Pay for Drivers

The Association proposes that an additional \$33 per month be paid to the basic monthly wage of the nine presently designated and assigned equipment operators. These are the drivers of engine #1, #2 and the aerial truck and are referred to in the June 5, 1972 letter of understanding attached to the '71-'73 agreement of the parties as amended by the proposed letter of understanding to be attached to the new agreement (Joint Exhibit #1 and Village Exhibit #3). Essentially, the Association claims that the practice among comparable fire departments using only full-time personnel is to pay a premium to the drivers. Association Exhibit #9 lists six departments paying driver premiums ranging from \$33 to \$54 per month. Of these six departments, five do not use volunteers.

The Village counters the Association claim with the statement that "additional pay for drivers is granted in less than 40% of the fire departments in the Milwaukee area." (Village brief, pp. 2-3) The Village also notes that the cities of Brookfield and Waukesha do not pay driver premiums although they use only full-time personnel. In summary, the comparative evidence of the parties on this particular point show that five of the seven departments which do not use volunteers pay a driver premium, while a majority of all the departments, those which use some volunteers and those which do not, do not pay a driver premium.

In addition to the comparison with the pay practice of other communities, the parties presented many exhibits (see Village Exhibits 9-14 and Association Exhibits 10-12) and extensive testimony concerning the responsibilities of the drivers. The Village argued that all firefighters are trained as drivers and may be called on to fill in as a driver in the event a regular driver or relief driver is not available. It introduced testimony and statistics showing that the number of fire alarms answered per driver was less in West Milwaukee than in West Allis and Wauwatosa and further argued that the relatively small area encompassed within West Milwaukee led to shorter runs and made it easier for drivers to learn the various fire routes.

The Association argued that the drivers had special responsibilities (Association Exhibit #10) and were subject to discharge for failure to carry them out. In support of its claim, the Association introduced Exhibit #12, in which the Wisconsin Employment Relations Commission had occasion to state that "The driver of Engine No. 1 has a more responsible position than other Fire-Fighting employees." and that "Historically, the driver of Engine #1 has been promoted to Lieutenant." (p. 23 of WERC discussion in its Memorandum in Case VI, No. 13995, MP-85, Decision No. 9845-B). The importance that the parties give to the driver position is further attested to by the letters of understanding previously referred to.

The arbitrator is persuaded that the driver positions are more important than those of the other firefighters. Whether they are sufficiently more demanding to warrant payment of a premium and whether this would be a superior pay plan to one which did not distinguish between the drivers and the other firefighters is not clear. The arbitrator can understand why there are two almost equally divided practices with which the parties can compare. On the basis of job content alone, the arbitrator favors the Association position slightly, but against this predilection, he must balance the additional cost of the premium. An increase of \$33 to nine of the 31 firefighters listed in Village Exhibit #2 carries the cost equivalent of an additional across the board increase of approximately \$9.50/month per person. This problem is considered further in the summary section of this discussion.

Paid Vacations

The primary basis for the Association demand for an additional day of paid vacation at each step of the schedule seems to be historical in nature. There is not dispute about the fact that the Chief changed the method of computing 1970 vacation time to reduce the amount of vacation time relative to the method used to calculate vacations in 1968 and 1969, nor that the WERC ordered the restoration of the time lost (Association Exhibit #12, pp. 14, 21, and 22). There is a direct contradiction in testimony as to the existence of an oral agreement to use the WERC decision as the basis for computing future vacation pay. The Association claims that its acceptance of the Village's vacation schedule in the '71 agreement was tied to an oral agreement between the Village and the Association that it would be amended to conform to the Association's position if such position was upheld by the WERC in the case then pending before it. The WERC upheld the Association but the Village refused to amend the vacation schedule and at this hearing flatly denied that they had made an oral agreement of this nature.

Whether the better vacation schedule was bargained away in the course of obtaining other benefits, as is suggested by the Village, or was lost because of the failure of the Village to live up to its oral commitments, as is suggested by the Association, is not a matter that can be resolved satisfactorily at this point in time and therefore the arbitrator must turn to other evidence for further guidance.

The Village claims that the present vacation schedule is equivalent to that of the West Allis and Whitefish Bay fire department schedules and also is comparable to the vacation schedules of the West Milwaukee policemen and public works employees; the Association challenges the Village claim of uniformity among various West Milwaukee groups.

Neither party introduced evidence on prevailing practice in the many other fire departments in the Milwaukee metropolitan area. Only two departments were cited by the Village (West Allis and Whitefish Bay) and these have vacation schedules that are closer to the present schedules offered by the Village than to those proposed by the Association.

The arbitrator made various calculations to determine whether the vacation schedules of the West Milwaukee policemen, public works employees and firefighters were identical. It was found that they were not but that the present firefighter schedule is more akin to the other two schedules than is the one proposed by the Association. It might be noted that over a year, the public works employees are scheduled to work 260 days while the policemen are scheduled to work approximately 252 days (because they are on a 5-2, 4-2 schedule as opposed to the public works employees who are on a 5-2, 5-2 schedule). Since both groups have the same vacation schedule, the police ratio of vacation days to work days is slightly more favorable than that of the public works employees. The additional consideration of holidays, however, gives them virtually the same ratio of days off to workdays because the public works employees have one more holiday than the police.

The present firefighter schedule seems to be reasonably equivalent to the other two schedules. The firefighters work approximately 122 (twenty-four hour) days per year and get 5, 7, 10 or 12 (twenty-four hour) days vacation per year depending on length of service. Assuming 1-8 years service, the ratio of the firefighters' vacation days to duty days is about 5 to 122 or approximately 4.1%; the ratio of public works employees' vacation days to duty days is 10 to about 260, or approximately 3.8%; the ratio of policemen's vacation days to duty days is 10 to about 252, or approximately 4.0%. The same relationships hold true for the 16 to 23 years of service bracket. For the 9-15 and 24 and over service brackets the respective percentages for firefighters, public works employees and policemen are 5.7%, 5.8% and 6.0%. If holidays are added to vacation days off and the ratio of total days off to scheduled workdays is calculated, the firefighters seem better off than the other two groups. The arbitrator believes, therefore, that the Association claim for increased vacation schedule is not supported by comparisons with firefighters in comparable communities or with other public employees of West Milwaukee. A further consideration, taken into account in the summary section of this discussion, is that an increase of one vacation day per year is worth roughly \$7.70 per month ($1/122 = 0.8\%$; $.008 \times \$965 = \7.72).

Contract Duration

The arbitrator believes that the Village arguments in favor of the two year agreement with a reopener for wages only are in this instance equally balanced by the Association arguments for a one year agreement. The arbitrator believes, however, that the positions of the parties on this particular issue do not fit particularly well with their positions on the driver premium and vacation issues. If an arbitrator were to select the position that maintained the status quo on these two other issues, he would probably prefer to do so for one year rather than two years. On the other hand, if an arbitrator selected the position that provided for increased benefits, he might prefer to do so within the context of a two year contract so that the parties would not be faced with the prospect of bargaining again on these same issues in a few months.

Unfortunately, however, for this arbitrator, the status quo position on the other two issues is tied to a two year agreement with a reopener for wages only while the improved benefits are tied to a one year agreement. The issue of contract duration does not seem pivotal in the selection of offers, however, since there is a

wage reopener. The choice made on this issue determines whether a particular solution to the driver premium and vacation schedule questions will prevail for one year or two years, a question that seems less important than the question of which schedule will prevail. It also should be acknowledged that there are probably many other items on which the Association wishes to bargain, and that if the Village position prevails, the Association will not be able to bargain on these other items for two years instead of after one year as it prefers.

The Village also proposes that the agreement be reopened if a Federal law is passed that requires the payment of overtime to firefighters working a 56 hour week. The Association argues that this item is not properly before the arbitrator because it "was not included by the Village in its contract negotiations" (Association brief, p. 11) and had been regarded as a side item. The Village does not agree with the Association interpretation of the bargaining history and claims that it is properly a part of the arbitration. Both parties agree, however, that the matter is presently moot because, during the next two years, the recently enacted legislation will not require the payment of overtime for workweeks of 56 hours. The arbitrator therefore will give no weight to this question in determining which final offer will be chosen.

Summary of Discussion

Before indicating which of the final offers appears to be the more equitable under the standards set forth in the statute, the arbitrator wishes to note that neither offer is unreasonable. Either position can be defended adequately, as was done by the parties at the hearing and in their briefs. The Village position on the size of the wage increase rests primarily on its comparison with firefighter wage scales in comparable communities, while the Association position on the wage increase is based mainly on changes in the cost of living. The arbitrator's problem is compounded, however, by the existence of other issues and the fact that this is a Form 2 arbitration case in which he must choose either offer in its totality without modification.

If the final offer of the Association had been for a \$55 general wage increase and the initiation of the \$33 driver premium for the nine regularly assigned drivers, the arbitrator believes that he would have chosen it in preference to the Village position. If the Association final offer had been for a general wage increase of \$77 and it had dropped its demands for the driver premium and increased vacation, he probably would have chosen it in light of the rapid increase in the cost of living during the past year.

It is true that a \$77/month increase would have moved the Village somewhat further ahead of the other nine communities with which it compared itself, but only one or two of these have newly negotiated wage increases. The others reached agreement a year or two ago as part of multi-year agreements. Presumably this unanticipated acceleration in the cost of living will lead the unions in these other cities to demand extremely large "catch up" wage increases next year to restore real wages to their former level. Since the agreement between the Village and the Association is open now, a decision to follow the wage pattern established a year ago, in effect denies the Association the right to fully protect real wages even though its contract is open at this time.

The arbitrator has already stated his opinion that the Association proposal for an increase in vacation was not supported by the comparison with the vacation schedules of two other fire departments or with vacation schedules of other employees of the Village. Furthermore it increases the cost of the package. The choice between the one year agreement and the two year agreement with a reopener for wages (and to renegotiate the overtime provisions if a Federal statute were passed requiring the payment of overtime for the existing workweek) is marginal and does not tilt the scales in favor of either offer.

What it boils down to is whether the arbitrator thinks that a package providing for a \$77/month wage increase, plus a \$33/month wage increase for approximately 30% of the bargaining unit, plus an additional 24-hour-duty-day of vacation is a more reasonable or less reasonable package in light of all the facts than one which consists of a general wage increase of \$55/month. (In addition, the parties had already agreed that the Village would pay the entire employee contribution to the Wisconsin retirement fund, an increase over the amount contributed under the prior agreement of 1/2% on earnings up to \$9,000.)

In view of the fact that the Village firefighter wage scale compares very well with others in the area, so far as can be determined from the evidence which was presented, the arbitrator believes that the Village offer is more reasonable and therefore for the reasons discussed herein selects the final offer of the Village. In making this choice, the arbitrator wishes to emphasize that he is not saying that real wages of firefighters and other public employees should not be fully protected against inflation, but only that the facts in this case suggest that this can be deferred in part until next year when the contracts of comparable communities are open for negotiation.

AWARD

On the basis of the facts and arguments presented at the hearing and in the posthearing briefs, and when measured against the standards set forth in the statute, the arbitrator finds that the final offer of the Village is more reasonable than that of the Association for the reasons discussed herein and therefore orders that the final offer of the Village set forth previously in this discussion be incorporated into the agreement of the parties and placed into effect.

5/14/74

Date

James L. Stern /s/

James L. Stern
Arbitrator